

## DIVISION L – HOMELAND SECURITY ACT OF 2002 AMENDMENTS

In implementing this agreement, the departments and agencies affected in this division shall comply with the language and instructions set forth in the Senate explanatory statement as delineated in the Congressional Record of January 15, 2003, page S838, that are not otherwise contradicted by the committee of conference.

The conference agreement includes section 101, as proposed by the Senate, that modifies section 308 and subsection 835(d) of the Homeland Security Act, respectively, by (1) expanding the discretion of the Homeland Security Secretary in his application of listed criteria, and authorizing him to consider additional criteria beyond those specified in the section when designating any of the nation's colleges or universities as a college- or university-based center for homeland security that shall conduct extramural research; and (2) limiting the authority of the Homeland Security Secretary to waive the prohibition on entering into contracts with corporate expatriates by restricting the waiver authority only to contracts for which the Secretary determines that the waiver is required in the interest of homeland security. The House bill contained no similar provision.

The conference agreement expands the discretion of the Secretary of the Department of Homeland Security in his application of the listed criteria when designating any of the nation's colleges or universities as a college- or university-based center for homeland security. Such a center is part of the Secretary's broad authority to conduct extramural research under grants,

cooperative agreements and contracts. Designating a center or centers is just one way in which the Secretary's authority can be used.

The conference agreement includes section 102, as proposed by the Senate, which repeals sections 1714 through 1717 of the Homeland Security Act as if such sections never were effective and replaces these sections with alternative language regarding the application of the Public Health Service Act and a rule of construction with respect to prior law and to *Leroy v. Secretary of Health and Human Services*, Office of Special Master, No. 02-392V (October 11, 2002). No legal inference regarding existing law prior to or after the enactment and repeal of these sections shall be drawn by the courts from the enactment and subsequent repeal of these provisions. The repeal leaves unaffected pre-existing case law, such as *Leroy v. Secretary of Health and Human Services*. The conference agreement modifies a Sense of the Senate provision to a Sense of the Congress that the Senate Committee on Health, Education, Labor, and Pensions and the House Committee on Energy and Commerce should report legislation within six months to protect the public health and the nation's ability to produce existing vaccines and develop new vaccines. The House bill contained no similar provision.

The conference agreement includes section 103, as proposed by the Senate, which modifies sections 232(f), 234(b), 873(b), and 1511(e)(2) of the Homeland Security Act. These modifications would, respectively: ensure that transfers of funds, personnel, and assets within and from the Department of Justice are governed by the procedures established in section 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002; permit the Coast Guard to use

pre-existing authority to accept gifts and donations of services; and permit the Coast Guard to continue to receive funds from the aquatic resources trust fund of the highway trust fund for boating safety programs. The House bill contained no similar provision.

In addition, the conferees have agreed to include in section 103, as proposed by the Senate, a provision adding a new section 1714 to the Homeland Security Act that requires that any report or notification to, or consultation with, the Congress or any Congressional committee required by the Homeland Security Act, and addressing directly or indirectly the use of appropriated funds, also be submitted to or held with the Committees on Appropriations of the Senate and the House of Representatives. The House bill contained no similar provision.

The conference agreement replaces a provision (section 104) proposed by the Senate relating to certain waivers of contracts with corporate expatriates. The substitute provision makes changes to the Homeland Security Act of 2002 (Public Law 107-296) and the Inspector General Act of 1978 (Public Law 95-452) relating to the Inspector General of the Department of Homeland Security. The House bill contained no similar provision.

The conference agreement includes a provision (section 105) relating to the transfer of the Attorney General's authorities under the Immigration and Nationality Act to the Secretary of Homeland Security.

The conference agreement includes a savings provision (section 106), as proposed by the Senate, relating to pending or completed administrative actions, any proceeding, and pending civil actions with respect to the transfer mandated by the Homeland Security Act of the Bureau of Alcohol, Tobacco, and Firearms to the Department of Justice from the Department of the Treasury. The House bill contained no similar provision.

The conference agreement includes a provision (section 107), as proposed by the Senate, which repeals section 457 of the Homeland Security Act, including the amendment made by that section, relating to the costs and funding of certain immigration services. The conferees also modified this section to address court jurisdiction matters.

The conference agreement deletes a Sense of the Senate provision (section 107) that states that Senate conferees should insist that the Joint Conference adopt section 102 of the Senate amendment. The House bill contained no similar provision.

The conferees agree that several specific provisions of the Homeland Security Act directly or indirectly address the oversight and use of appropriated funds and that the Senate and House Committees on Appropriations will review such sections in depth.

DIVISION M—OTHER MATTERS  
DEFENSE RELATED TECHNICAL CORRECTIONS

The conferees considered Section 5 of H.J. Res. 2 as passed the House, and Division M of H.J. Res. 2 as amended by the Senate. The conference agreement includes an amended version of Division M, as described below.

The conferees recommend retaining and amending a number of general provisions, proposed by either the House or Senate, which make technical and other adjustments regarding funding and activities provided for in Public Laws 107-248 and 107-249 (the Defense Appropriations Act, 2003, and the Military Construction Appropriations Act, 2003, respectively). In addition, in section 109 of this division the conferees recommend new appropriations totaling \$10,000,000,000, pursuant to requests from the White House, for selected military and intelligence activities in support of the global war on terrorism.

Of this amount, \$3,900,000,000 is for classified programs in support of the global war on terrorism and other critical anti-terrorism initiatives. These programs are described in a classified annex accompanying this joint statement. The remaining \$6,100,000,000 is for reimbursement of personnel

and operational costs incurred during the first quarter of the current fiscal year by the Department of Defense as a result of Operation Enduring Freedom; Operation Noble Eagle; and related activities in the war on terrorism and homeland security operations. These funds are to be allocated as follows.

### Military Personnel

The conference agreement includes \$1,617,000,000 for active duty pay and allowances costs incurred from October through December 2002. This includes incremental cost increases in hostile fire pay, family separation allowances, hardship duty pay, subsistence and additional readiness/stop-loss personnel. Also covered are pay and allowances for the first quarter costs associated with mobilized Reservists and National Guardsmen.

(In Thousands of Dollars)

	<i>Conference Amount</i>
Military Personnel, Army .....	771,200
Military Personnel, Navy .....	213,800
Military Personnel, Marine Corps.....	68,600
Military Personnel, Air Force .....	563,400

## Operation and Maintenance

The conference agreement includes \$4,387,900,000 for operations costs incurred from October through December 2002. These include personnel support costs (temporary duty, clothing, personal equipment and supplies, medical support and services, and subsistence); operating tempo costs (including incremental ship steaming days and aircraft flying hours, materials and services supporting operations, fuel, and spare/repair parts); and costs associated with the transportation of personnel, equipment, and material.

(In Thousands of Dollars)

	<i>Conference Amount</i>
Operation and Maintenance, Army.....	1,210,000
Operation and Maintenance, Navy .....	378,300
Operation and Maintenance, Marine Corps .....	202,100
Operation and Maintenance, Air Force.....	1,686,300
Operation and Maintenance, Defense-Wide .....	911,200
(U.S. Special Operations Command .....	531,100)
(Defense Logistics Agency .....	289,700)
(Defense Information Systems Agency .....	51,200)
(Defense Threat Reduction Agency .....	39,200)

## Defense Health Program

The conference agreement includes \$95,100,000 for the Defense Health Program, for the costs of replacement personnel to perform essential duties of deployed personnel; transportation costs to points of embarkation; funding for temporary duty in order to sustain essential health care services at military treatment facilities and in the private sector; additional funds for health care to support mobilized Reservists and their families; the costs of immunizations for personnel being deployed, and force protection.

## Reprogramming Thresholds

The conferees agree to amend the Senate's recommendation to raise the thresholds for internal reprogramming actions. The conferees agree to increase reprogramming thresholds as proposed by the Senate, for Procurement and Research, Development, Test and Evaluation appropriations accounts for the remainder of fiscal year 2003. Changes to reprogramming thresholds are effective upon enactment of the accompanying Act and apply to fiscal year 2003 Procurement and Research, Development, Test and Evaluation appropriations. The Department shall submit Prior Approval reprogramming requests, DD Form 1415-1, in those instances when reprogramming of funds exceed the following thresholds:



-An increase or decrease of \$20,000,000 for program year 2003/2005 appropriations for a Procurement line item.

-An increase or decrease of \$10,000,000 for program year 2003/2004 appropriations for a Research, Development, Test and Evaluation program element.

Each of the reprogramming thresholds described above reflects aggregate levels of reprogramming activity within Procurement line items, and Research, Development, Test and Evaluation program elements.

The reprogramming of funds below these thresholds shall not increase lines specifically reduced by congressional action or decrease congressional interest items.

No below threshold decrease may exceed twenty percent of appropriated levels for each procurement line, or program element, or the limitations above, whichever is greater.

Below threshold reprogramming may restore non-specific reductions to the original level of the budget request or the level determined in the account tables, whichever is less.

## Project Athena

The Statement of Managers accompanying the conference report on Public Law 107-248 provided an earmark in the Research, Development, Test and Evaluation, Navy appropriation of \$11,000,000 for development of the Project Athena coastal defense beta site from within the Marine Corps Communications line, PE 0206313M. The conferees agree that the line for the earmark is hereby changed to the Combating Terrorism Technology Support line, PE 0603122D8Z, in the Research, Development, Test and Evaluation, Defense-Wide appropriation. The conferees also agree that the amount of the earmark shall be decreased to \$6,000,000.

## Domed Housing

The Statement of Managers accompanying the conference report on Public Law 107-248 directed that \$2,000,000 be made available for the acquisition of domed housing in the Marshall Islands to support Department of Defense housing requirements. The conferees further direct that the procurement of additional domed housing units be limited to those U.S. construction companies that have previously built this type of housing in the Marshall Islands.

## National Defense Sealift Report

The conferees direct the Secretary of the Navy and the Secretary of Transportation to jointly report to the Committees on Appropriations, within 90 days of enactment of this Act, on the feasibility of establishing a pilot project to accelerate the introduction of next-generation high-speed sealift ships. Such a project shall provide for the construction in a United States shipyard of two high-speed sealift ships (together with ancillary facilities and equipment) to be used in commercial service and to be available to support the Navy's global military sealift requirements. Project financing should be derived from loans guaranteed by the Secretary of Transportation supported by amounts appropriated in fiscal years 2002 and 2003 under the National Defense Sealift Fund (designated for construction of additional sealift capacity), amounts appropriated to support Title XI maritime loan guarantees, and sums provided by non-federal parties as appropriate. Such report shall include an analysis of the national security benefits of using sealift ships designed to carry at least 10,000 tons of cargo at 36 knots or higher in sea states of up to 16 feet to meet high priority military requirements compared to existing sealift capabilities. Such report shall also include a technology readiness assessment, a financial analysis, and any

additional recommended legislation that may be required to accomplish this project.

### GENERAL PROVISIONS — THIS DIVISION

The conferees agree to amend section 101, as proposed by the Senate, which allows funds to be used to settle the disputed taking of property adjacent to the Tooele Army Depot.

The conferees agree to retain section 102, as proposed by the Senate, which provides funds for disposal of obsolete vessels in the Maritime Administration National Defense Reserve Fleet, and requires the Department to report to the congressional defense committees by March 1, 2003.

The conferees agree to delete section 103, as proposed by the Senate. The conferees agree, however, to amend section 122 of P.L. 107-249 to create an exception to the general prohibition against using NATO Security Investment Program (NSIP) funds in the New Independent States of the former Soviet Union. This exception authorizes no more than \$1,000,000 to establish a communication system that connects various NATO headquarters and partnership for peace nations.

The conferees agree to retain section 104, as proposed by the Senate, which is a technical correction that moves funds from the Military Construction, Air Force account to the Military Construction, Air Force Reserve account.

The conferees agree to modify section 105, as proposed by the Senate, to clarify that the Secretary of the Air Force is authorized to transfer funds to the United States Fish and Wildlife Service for the purpose of acquiring land at Nellis Air Force Base.

The conferees agree to amend section 106, as proposed by the Senate, which increases the expense/investment threshold from \$100,000 to \$250,000 for items purchased with operation and maintenance funds, and includes authorization and grant authority for projects expressly designated for the Office of Economic Adjustment in the Statement of Managers accompanying the conference report on Public Law 107-248.

The conferees agree to amend section 107, as proposed by the Senate, which includes transfers of \$104,000,000 in order to accelerate Patriot PAC-3 missile production. Among the sources specified in this general provision

is "Weapons and Tracked Combat Vehicles, Army, 2003/2005", for \$5,000,000 from the M1A2 SEP program. This section transfers \$7,000,000 from "Other Procurement, Air Force, 2003/2005", from the following programs:

Thinpack Parachutes.....	-\$3,000,000
Replacement of Transport Aircraft Troop Seats.....	-3,000,000
Replacement of Tactical Aircrew Life Preservers with the Navy's LPU-36.....	-1,000,000

This section also transfers \$36,900,000 from "Research, Development, Test and Evaluation, Defense-Wide, 2003/2004". This amount includes \$13,900,000, as specified by the Senate, from the ground-based midcourse defense sea-based x-band radar (SBX), and \$23,000,000 from a Patriot PAC-3 enhancement program.

The conferees agree to amend section 108, as proposed by the Senate, which provides necessary legislative language for the timely execution of funds for certain Department of Defense Office of Economic Adjustment activities as provided in the Statement of Managers accompanying the conference report for Public Law 107-248.

The conferees agree to amend section 109, as proposed by the Senate, to provide \$10,000,000,000 to support the global war on terrorism and

classified activities, as requested by the White House. The conferees direct that all funds provided pursuant to section 109 be only for those activities cited in this joint statement and in the classified annex thereto.

The conferees agree to amend section 110, as proposed by the Senate, to provide authorization for fiscal year 2003 appropriations for intelligence activities pursuant to Section 504 of the National Security Act of 1947.

The conferees agree to include, with slight technical modifications, section 111 of Division M of the Senate passed bill regarding the Department of Defense's Total Information Awareness (TIA) program. In two instances the provision has been modified. First, the conferees agree to allow the Administration 90 days after the bill is enacted to submit a report to Congress on the TIA program, instead of 60 days as proposed by the Senate. Second, the provision has been modified to clarify that, subject to the other terms and conditions of this section, the TIA program may be deployed at operating bases in the United States to assist in the conduct of lawful U.S. foreign intelligence activities against non-United States citizens only. The conferees agree with the clear intent of the Senate provision that, in no case, should the TIA program be used by the Department of Defense to

conduct intelligence activities on United States citizens, or transferred to any other Federal agency for the same purpose.

The conferees agree to amend section 112, as proposed by the House, which provides the Secretary of Defense additional transfer authority of \$500,000,000, only for unforeseen fuel cost requirements resulting from revised pricing and the global war on terrorism. Additionally, this provision is further amended to require prior notification of the Committees on Appropriations before any funds made available to the Department of Defense are used for the drawdown authority provided in Section 202 of the Afghanistan Freedom Support Act (Public Law 107-327).

The conferees are supportive of the overall objectives of the Afghanistan Freedom Support Act (AFSA). Nonetheless the conferees are extremely troubled that, in its first use of this authority, the Administration chose to use the U.S. military services' operations accounts as its funding source for the initial increment of AFSA drawdown – diverting \$165,000,000 originally requested and subsequently appropriated for U.S. Army, Navy, and Air Force unit training and flying hours. As noted by the Deputy Secretary of Defense in a February 10, 2003 letter to the Defense



Appropriations Subcommittees of the House and Senate, "DoD cannot absorb these costs without affecting readiness."

To implement this provision, the conferees therefore direct that the Department of Defense provide not less than 15 days prior written notification to the Committees on Appropriations prior to exercising any use of the section 202 drawdown authority which would use DoD funds. This notification should be provided no later than other required AFSA drawdown notifications to the Committees on Appropriations (e.g., Presidential determinations, or notifications from the Department of State, or others, as required under the AFSA or other laws). Each such notification shall include the proposed source of DoD funds by appropriations account and activity, as well as a description of the impact these funding transfers will have on the DoD programs so affected.

DIVISION N  
TITLE I  
ELECTION REFORM

The conferees agree to provide \$1,500,000,000 for election reform. This includes funds to establish an Election Assistance Commission and to carry out programs authorized by the Help America Vote Act of 2002. The conferees agree to provide \$650,000,000 to the General Services Administration (GSA) to carry out a program of payments to the States for improving the administration of elections and replacing punch card and lever voting machines with new voting technology. The conferees also agree to provide <sup>15,000,000</sup> ~~\$28,000,000~~ to the Department of Health and Human Services for programs to ensure disabled voter access.

TITLE III – WILDLAND FIRE EMERGENCY  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WILDLAND FIRE MANAGEMENT

The conference agreement includes \$189,000,000 for wildland fire management as proposed by the Senate instead of an emergency supplemental appropriation for fiscal year 2002 of \$200,000,000 as proposed by the House. These funds are to repay amounts transferred from other accounts to fight fires in fiscal year 2002.

RELATED AGENCY  
DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
WILDLAND FIRE MANAGEMENT

The conference agreement includes \$636,000,000 for wildland fire management as proposed by the Senate instead of an emergency supplemental appropriation for fiscal year 2002 of \$500,000,000 as proposed by the House. These funds are to repay amounts transferred from other accounts to fight fires in fiscal year 2002.

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The conference agreement also earmarks amounts to be repaid to individual Forest Service appropriations accounts as proposed by the Senate. The House had no similar provision.

## DIVISION N – TITLE IV TANF AND MEDICARE

The conference agreement includes section 401, which extends the Temporary Assistance for Needy Families in the manner authorized for fiscal year 2002 through June 30, 2002, instead of September 30, 2002 as proposed by the Senate. The House bill contained no similar provision.

The conference agreement includes a new section, section 402, in lieu of sections 402 through 404 as proposed by the Senate, which 1) temporarily increases payments to rural and "other urban" hospitals through September 30 to the large urban standardized amount; and 2) provides legal protection for the Administration should they make corrections to data errors in the physician payment formula for past fiscal years. The House bill contained no similar provision.

The conference agreement includes section 403, originally proposed by the Senate as section 405 in the Senate amendment, which extends the Federal payment for Medicare Part B through Medicaid for qualifying individuals (those between 120 and 135 percent of poverty) through September 30, 2003. The House bill contained no similar provision.

## DIVISION N-TITLE V-FISHERIES DISASTERS

Section 501. – The conference agreement includes section 501, included in the Senate, providing \$100,000,000 for various fishery disasters. The House did not include a similar provision.

## TITLE VI OFFSETS

The conference agreement includes a 0.65 percent across-the-board rescission to discretionary budgetary resources provided in divisions A through K of this Act, as well as to any previously enacted fiscal year 2003 advance appropriation. This rescission does not apply to the Head Start program, the Veterans' Medical Care program, the Women, Infants, and Children nutrition program, or the space shuttle program. Specific exemptions for these programs are also included in the respective sections of this joint resolution.

Senate

## TITLE VII

### BONNEVILLE POWER ADMINISTRATION BORROWING AUTHORITY

The conference agreement provides \$700,000,000 of new borrowing authority to the Bonneville Power Administration as proposed by the Senate. The conferees direct the Bonneville Power Administration to submit a detailed budget justification, by project, for its total capital improvement program to the House and Senate Committees on Appropriations not later than March 30, 2003, and to submit thereafter as part of the annual budget request, for approval by the House and Senate Committees on Appropriations.



XEROX

DIVISION O

PRICE-ANDERSON ACT AMENDMENTS

The conference agreement modifies bill language as proposed by the Senate to extend portions of the Price-Anderson Act through December 31, 2003.

DIVISION P – U.S.-CHINA ECONOMIC AND SECURITY REVIEW  
COMMISSION


The conferees have included, under Division P, language and funding regarding the U.S.-China Economic and Security Review Commission.

Managers on the part of the  
HOUSE

  
W. BILL YOUNG

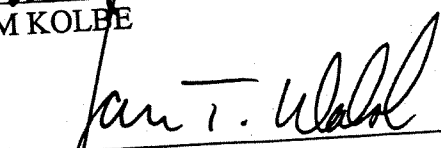
  
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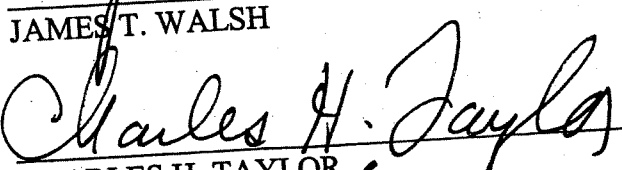
  
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HAROLD ROGERS

  
FRANK R. WOLF

  
JIM KOLBE

  
JAMES T. WALSH

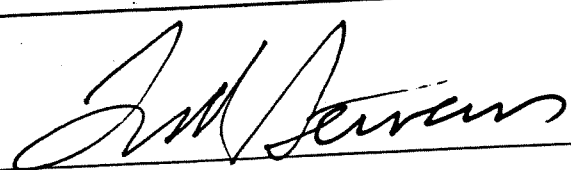
  
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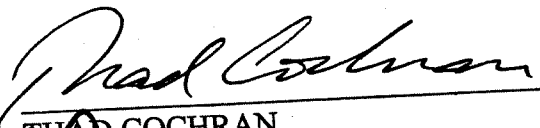
  
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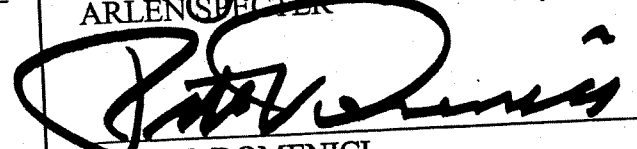
  
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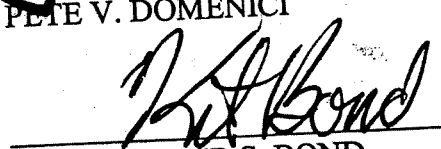
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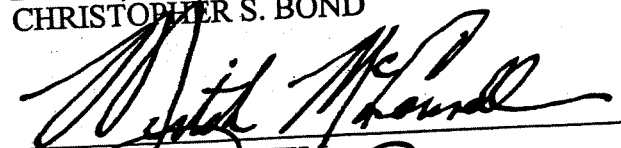
  
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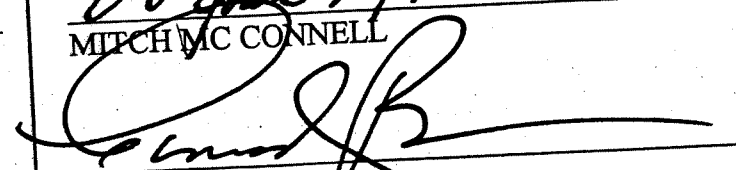
  
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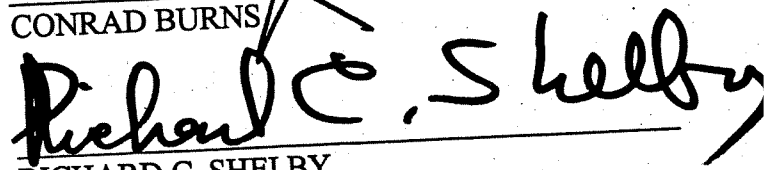
  
ARLEN SPECTER

  
PETE V. DOMENICI

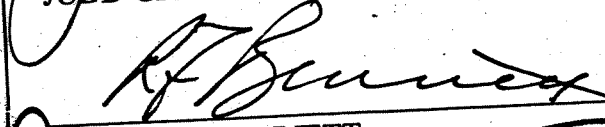
  
CHRISTOPHER S. BOND

  
MITCH MC CONNELL

  
CONRAD BURNS

  
RICHARD C. SHELBY

  
JUDD GREGG

  
ROBERT F. BENNETT

  
BEN NIGHTHORSE CAMPBELL

~~JOE KNOLLENBERG~~  
JOE KNOLLENBERG

~~JACK KINGSTON~~  
JACK KINGSTON

~~LARRY CRAIG~~  
LARRY CRAIG

~~KAY BAILEY HUTCHISON~~  
KAY BAILEY HUTCHISON

~~MIKE DEWINE~~  
MIKE DEWINE

~~JOHN P. MURTHA~~  
JOHN P. MURTHA

~~NORMAN D. DICKS~~  
NORMAN D. DICKS Except sections 323  
and 335 of Division F,  
and conservation spending

~~SAM BROWNBACK~~  
SAM BROWNBACK

~~ROBERT C. BYRD~~  
ROBERT C. BYRD

~~DANIEL K. INOUE~~  
DANIEL K. INOUE

~~ERNEST F. HOLLINGS~~  
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~~ALAN B. MOLLOHAN~~  
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~~PATRICK J. LEAHY~~  
PATRICK J. LEAHY

~~PETER J. VISCLOSKEY~~  
PETER J. VISCLOSKEY

~~BARBARA A. MIKULSKI~~  
BARBARA A. MIKULSKI

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BARBARA A. MIKULSKI

~~JOSE E. SERRANO~~  
JOSE E. SERRANO

~~JOSE E. SERRANO~~  
JOSE E. SERRANO

*Patty Murray*  
PATTY MURRAY Except for Sec. 323  
and Sec. 335 of  
Division F

*Byron L Dorgan*  
BYRON L. DORGAN

*Dianne Feinstein*  
DIANNE FEINSTEIN

~~RICHARD ROSEN~~

*Tim Johnson*  
TIM JOHNSON

*Mary L Landrieu*  
MARY L. LANDRIEU